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March 14, 2014

Honorable Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: In re Air Cargo Shipping Services Antitrust Litigation, 06-MD-1775 (JG)(VVP)

Dear Magistrate Judge Pohorelsky:

Plaintiffs respectfully submit the attached Stipulation and [Proposed] Order to Extend the Deadline for Plaintiffs to Take the Rule 30(b)(6) Deposition of OAG Cargo until May 31, 2014.

As the Court is aware, the parties' Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule set a deadline of December 31, 2013 by which fact discovery must end. ECF No. 1816. On December 31, 2013, the Court granted an extension of the deadline for plaintiffs to take the deposition of OAG Cargo until March 31, 2014.

OAG Cargo is a non-party that maintains a large collection of surcharge announcements, which were published on its website during and after the class period. These announcements include many that pertain to current and former defendants in this action but were not produced by defendants in this action.

On December 9, 2013, plaintiffs served a subpoena on OAG Cargo for a deposition under Rules 45 and 30(b)(6) of the Federal Rules of Procedure for the purpose of establishing the admissibility of a large number of relevant surcharge announcements, which consist of a total page count of over 1,000 pages. To comply with the operative discovery schedule, the subpoena set the deposition for December 30, 2013. A copy of the subpoena, along with a notice of deposition, had been previously served on the defendants on December 6, 2013. The subpoena and notice of deposition, without their voluminous attachments, is attached as Exhibit 1.

Plaintiffs and OAG Cargo have been working together to devise a means by which the parties will be able to enter a mutually agreeable stipulation or declaration that would obviate the need for a deposition, or substantially its scope, and reduce the burden of compliance on OAG. However, the parties meet-and-confer process is not yet complete. In addition, OAG Cargo's inhouse counsel, Donna Gagliardo, has advised plaintiffs that she will likely serve as OAG Cargo's designee for the deposition, if one is needed, but she will not be available to be deposed before May 2014. According to Ms. Gagliardo, OAG Cargo's U.S. operations are leanly staffed, and its inhouse legal staff is limited to Ms. Gagliardo and a paralegal.





On March 11, 2014, plaintiffs requested the defendants' consent to this extension. As of the time of this filing, only Air New Zealand have agreed to the request. No other defendant has responded.

To avoid undue inconvenience to a non-party, plaintiffs respectfully request that the Court enter the attached Stipulation and [Proposed] Order to Extend the Deadline for Plaintiffs to Take the Rule 30(b)(6) Deposition of OAG Cargo. Exhibit 2. The stipulation has been agreed to by OAG Cargo, and one prior request for an extension of OAG Cargo's deposition has been made.

Respectfully Submitted,

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By: /s/ Michael D. Hausfeld

By: /s/ Gregory K. Arenson

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By: /s/ Hollis L. Salzman

By: /s/ Howard J. Sedran

cc: All Counsel of Record (via ECF)

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE AIR CARGO SHIPPING
SERVICES ANTITRUST LITIGATION

MDL No. 1775

Master File 06-MD-1775 (JG) (VVP)

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, plaintiffs, by and through their undersigned attorneys, will take the deposition of OAG Cargo on the topics identified on Schedule A of the attached subpoena on the date and at the time and place indicated below before a notary public or some other person duly authorized to administer oaths, which shall be recorded by stenographic means and by videotape. The deposition shall continue from day to day (weekends and holidays excepted) until completed. You are invited to attend and cross-examine.

<u>Deponent</u>	<u>Date/Time</u>	<u>Location</u>
OAG Cargo	December 30, 2013 9:00 a.m.	Walner Law Firm Ltd. 20 N. Clark Street, Suite 2450 Chicago, Illinois 60602

DATED: December 6, 2013

KAPLAN FOX & KILSHEIMER LLP

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Interim Co-Lead Counsel

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

In re Air Cargo Shipping Services Antitrust Litigation

Plaintiff

v.

Defendant

Civil Action No. 06-MD-1775(JG)(VVP)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: OAG Cargo, 3025 Highland Parkway, Suite 200, Downers Grove, Illinois 60515

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Schedule A

Place: Walner Law Firm Ltd., 20 N. Clark Street, Suite 2450,
Chicago IL 60602

Date and Time:

12/30/2013 9:00 am

The deposition will be recorded by this method: Stenographic means and Videotape

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/06/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs, who issues or requests this subpoena, are:

Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP, 850 Third Ave., 14th Floor, New York, NY 10022,
rkaplan@kaplanfox.com, 212-687-1980

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/13) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 06-MD-1775(JG)(VVP)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

MATTERS ON WHICH EXAMINATION IS REQUESTED

Pursuant to Rule 30(b)(6), you shall designate one or more officers, directors, managing agents, or other person(s) to testify concerning the following deposition topics:

1. Whether each of the attached documents is authentic within Rule 901 of the Federal Rules of Evidence.
2. Whether each of the attached documents is a record of regularly conducted activity within Rule 803(6) of the Federal Rules of Evidence.
3. Whether each of the attached documents was created contemporaneously by, or from information transmitted by, employees who had knowledge of the matters set forth therein.
4. Whether each of the attached documents was created in employees' regular practice as part of their business activities.
5. Whether each of the attached documents was sent by employees as part of their business activities.
6. Whether each of the attached documents is or was received, kept, or relied upon in the course of regularly conducted business activities.

CERTIFICATE OF SERVICE

I, Elana Katcher, declare that, on December 6, 2013, I will cause a true and correct copy of the attached Notice of Deposition to be delivered to the following parties via electronic mail:

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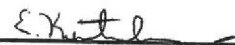

Elana Katcher

Exhibit 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE AIR CARGO SHIPPING
SERVICES ANITRUST LITIGATION

MDL No. 1775

Case No. 06-MD-1775 (JG) (VVP)

**STIPULATION AND [PROPOSED]
ORDER TO EXTEND THE DEADLINE
FOR PLAINTIFFS TO TAKE THE RULE
30(B)(6) DEPOSITION OF OAG CARGO**

WHEREAS the parties' Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule (as ordered by the Court on March 6, 2013) set a deadline of December 31, 2013 by which fact discovery would end;

WHEREAS on December 9, 2013, plaintiffs served a subpoena upon non-party OAG Cargo, the trade name for the cargo portion of the business of OAG Aviation Worldwide LLC and its parent, OAG Aviation Worldwide Limited, for a deposition under Rules 45 and 30(b)(6) of the Federal Rules of Civil Procedure to establish the foundation for admissibility of specified documents;

WHEREAS the time by which plaintiffs must take the deposition of OAG Cargo had been previously extended by the Court until March 31, 2014 (as ordered by the Court on December 12, 2013);

WHEREAS the documents at issue consist of over 1,000 pages of surcharge announcements maintained by OAG Cargo;

WHEREAS plaintiffs and OAG Cargo are continuing to meet and confer on methods by which the need for a deposition can be obviated or its scope limited;

WHEREAS in-house counsel for OAG Cargo has advised plaintiffs that she will likely serve as OAG Cargo's 30(b)(6) witness, and is unavailable for a deposition before May 2014;

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among

the undersigned, that:

The deadline for the parties to take the aforementioned deposition of OAG Cargo shall be extended until May 31, 2014 for the purpose of allowing OAG Cargo and the plaintiffs time to negotiate in good faith a mutually agreeable declaration or stipulation that would suffice to establish the foundation for admissibility of the specified documents under Rules 803 and 901 of the Federal Rules of Evidence.

Dated: March 11, 2014

Respectfully submitted,

/s/ Brent Landau

Brent Landau
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(202) 540-7200 (telephone)
Counsel for Plaintiffs

/s/ Hollis L. Salzman

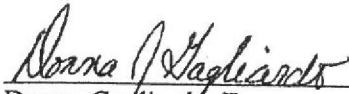
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Counsel for Plaintiffs

/s/ Robert N. Kaplan

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/s/ Howard J. Sedran

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Donna Gagliardo, Esq.
OAG AVIATION WORLDWIDE LLC
3025 Highland Park, Suite 200
Downers Grove, Illinois 60515

So Ordered

Victor V. Pohorelsky
United States Magistrate Judge

Dated: _____

CERTIFICATE OF SERVICE

I, Elana Katcher, declare that, on March 14, 2014, I caused true and correct copies of the foregoing letter motion, with attached Stipulation and [Proposed] Order to be delivered to all counsel of record via the Court's ECF system.

/s/ Elana Katcher
Elana Katcher